STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of L.C. GNAMIEN, Minor.

UNPUBLISHED
October 15, 2013

No. 314130
Oakland Circuit Court
Family Division
LC No. 12-800934-NA

Before: SAAD, P.J., and SAWYER and JANSEN, JJ.

PER CURIAM.

Respondent appeals by right the circuit court's order assuming jurisdiction over her minor son, LC, pursuant to MCL 712A.2(b)(1). She also challenges the circuit court's order removing LC from her custody and the circuit court's order authorizing the filing of a child protective proceeding petition. We affirm.

The family came to the attention of Children's Protective Services (CPS) after the agency received a complaint that respondent and LC (then 16 years old) were living in a car. Respondent agreed to a safety plan and was able to secure a hotel room for herself and LC. However, LC ran away from the hotel and stayed with a friend in Southfield. Respondent then left the hotel and stayed in a shelter that did not allow children above the age of 10. On September 4, 2012, LC informed school authorities that he did not have any place to stay at the end of the school day. He was no longer able to stay at his friend's home and respondent was unable to find any relatives with whom he could stay. The circuit court determined, after being contacted by petitioner after hours, that there was reasonable cause to believe that LC was at substantial risk of harm and that his immediate removal from respondent's care was necessary to protect his health and safety because respondent had not provided proper care or custody.

I

Respondent first argues that the circuit court clearly erred by granting petitioner temporary custody of LC following an emergency hearing of which respondent received no notice. Due process issues are reviewed de novo. *In re CR*, 250 Mich App 185, 203; 646 NW2d 506 (2002). The circuit court's findings of fact are reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). We review de novo the proper construction and application of statutes and court rules. *Mason*, 486 Mich at 152.

The circuit court did not err by taking LC into temporary custody pursuant to MCR 3.963(B)(1), which allows the court to take a child into temporary custody if the child's health, safety, or welfare is in danger, and remaining in the home would be contrary to the child's welfare. A parent's presence is not required at the time of an emergency removal. However, once the child is taken into temporary custody, the parent must be notified and advised "of the date, time, and place of the preliminary hearing," MCR 3.963(C)(2), which must be held within 24 hours after the child has been taken into custody, MCR 3.965(A)(1). Respondent's due process rights were sufficiently satisfied because she was given the required notice of the preliminary hearing that was conducted within 24 hours of LC's removal. Further, respondent received a copy of the petition, was represented by court-appointed counsel, and fully participated in the two-day preliminary hearing. She availed herself of the opportunity to cross-examine witnesses and offered proofs to counter the admitted evidence as required by MCR 3.965(C)(1).

Respondent's contention that there was insufficient evidence to support the circuit court's temporary custody order is unpersuasive. Respondent argues that she had complied with petitioner's safety plan before LC ran away. But the first case worker assigned to the matter, Couls, testified that respondent did not adhere to the initial plan. The family did not stay at the hotel through Monday and did not contact the case worker about possible arrangements for LC to stay with a relative. Instead, LC stayed with a friend for approximately two weeks and respondent admitted at the preliminary hearing that she did not know LC's whereabouts for several days. When LC reported to school officials that he did not have anywhere to stay, respondent was staying in a homeless shelter that did not allow children over the age of ten. There was ample evidence that LC's health, safety, or welfare was in danger because he was without basic shelter. Moreover, remaining in respondent's care was contrary to LC's welfare. We perceive no error with regard to the circuit court's temporary custody order. See MCR 3.963(B)(1).

Respondent claims that she had secured a hotel room for herself and LC for the night of September 4, 2012. However, respondent did not testify about the hotel booking at the preliminary hearing and did not mention it until she testified in October. Moreover, the second case worker, Raspberry, testified that respondent did not tell her about the hotel booking when she spoke with her on September 4, 2012. Further, respondent admitted telling Raspberry that LC had no place to stay and that she wanted him placed in temporary foster care if he was unable to stay with his father or other relatives. There was also clear evidence that respondent, who had been unemployed since 2009, did not have money to pay for the room.

Respondent's claim that petitioner failed to make reasonable efforts to prevent LC's removal is without merit. The evidence shows that petitioner pursued alternatives to removing LC and sought temporary custody only as a last resort. In the days leading up to LC's removal, Couls made efforts to contact and involve the police in locating LC and provided respondent with multiple resources to find housing. Couls testified that he spoke with LC on the day of the removal, confirmed that LC had no place to stay and was without proper care and custody, and spoke with respondent to discuss placement options, including a guardianship, living with a friend, and having LC live with his father or stay in a homeless shelter. Both case workers attempted to find temporary placement for LC by contacting relatives. Vouchers to place

respondent and LC in a hotel were ultimately unavailable. The circuit court did not clearly err by concluding that petitioner had made reasonable efforts to prevent the removal of LC.

II

Next, respondent challenges the circuit court's authorization of the petition and LC's continued placement with petitioner pending adjudication. At the preliminary hearing, the court "may authorize a petition for removal of a child from his home . . . ." *Mason*, 486 Mich at 154. "The court may authorize the petition upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of [MCL 712A.2(b)]." MCL 712A.13a(2); see also MCR 3.965(B)(11).

The circuit court did not clearly err by authorizing the petition given the evidence that respondent was unable to provide shelter for LC. The evidence presented at the preliminary hearing established that LC had no place to stay on September 4, 2012, respondent could not provide housing for LC, and all avenues for finding suitable shelter for LC had been exhausted.

Respondent argues that the court erred by placing LC with petitioner for care and planning rather than returning LC to her. Specifically, respondent contends that there was no evidence presented, as required under MCR 3.965(C), to support a finding that it was contrary to LC's welfare to be placed with her. Once the petition is authorized, the court must decide whether the child should remain in the home, return home, or be placed in foster care pending adjudication. MCR 3.965(B)(11). The proofs that supported authorization of the petition also supported the circuit court's finding that it would be contrary to LC's welfare to return him to respondent's care pending trial.

Respondent also challenges the circuit court's finding that reasonable efforts were made to prevent LC's removal from respondent's care and custody. See MCR 3.965(D)(1). Our review of the record does not support respondent's argument. Respondent stated that her final option was to have LC live with his father in North Carolina if she could not make other living arrangements before school began in early September. Case worker Couls assisted respondent in locating suitable housing and explored other alternatives with her. The attempts of both case workers and respondent to locate relatives who would be willing to care for LC were unsuccessful. Respondent acknowledged to the case workers that she was unable to provide housing for LC and requested that he be placed in temporary foster care. The court adjourned the preliminary hearing for two weeks to give respondent and petitioner additional time to secure suitable housing. At the reconvened preliminary hearing, respondent was still unemployed and staying at the same shelter that would not accept teenage males.

Reviewing the record as a whole, and giving deference to the court's special opportunity to judge the credibility of the witnesses, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), we cannot conclude that the circuit court erred by authorizing the petition and granting petitioner temporary custody of LC pending adjudication.

III

Lastly, respondent challenges the circuit court's determination that LC came within its jurisdiction under MCL 712A.2(b). We disagree.

In juvenile proceedings, the circuit court "obtains jurisdiction over the matter once a petition is filed and the court has authorized the petition after conducting a preliminary inquiry." *In re AP*, 283 Mich App 574, 593; 770 NW2d 403 (2009). Even if the court has jurisdiction over the matter, however, "the child will not come under the court's jurisdiction and become a ward of the court until the court holds an adjudication on the merits of the allegations in the petition and finds by a preponderance of evidence that there is factual support for permitting judicial intervention." *Id*.

We review for clear error the circuit court's decision to exercise jurisdiction over a child in a child protective proceeding. *BZ*, 264 Mich App at 295. At least one of the statutory grounds set forth in MCL 712A.2(b) must be proven by a preponderance of the evidence at a trial or by a plea. *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008).

Under MCL 712A.2(b)(1), the circuit court has jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

> Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.

"'Without proper custody or guardianship' does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance." MCL 712A.2(b)(1)(B).

Respondent's claim that there was no competent evidence to establish that LC was "without proper custody or guardianship" is belied by the circuit court record. Although there were no indications that LC was unfed or unclothed, and there did not appear to be any disruptions in LC's education, respondent's lack of housing had been, and remained, a serious issue. Between mid-August and September 4, 2012, LC stayed with friends who did not have legal authority to provide for him. For several days, respondent did not know LC's whereabouts. Even assuming arguendo that respondent provided proper care and custody by allowing LC to remain at his friend's house, LC was clearly without proper custody or guardianship within the meaning of MCL 712A.2(b)(1) on September 4, 2012, when he reported to school authorities that he did not have anywhere to stay.

The circuit court reasonably concluded that respondent had developed a pattern of unstable housing. It was undisputed that respondent had been unemployed since returning from Italy in 2009. In 2010, there was a CPS substantiated case concerning respondent's lack of housing and respondent was provided with services. Respondent and LC were evicted from the maternal grandmother's senior living residence. For a time, they stayed at a house vacated by an uncle, until they were evicted when that house was foreclosed in May 2012. The testimony revealed that respondent and LC then stayed with various relatives or at a motel. LC testified that on two or three occasions in June 2012, they slept in a car parked in a parking lot, usually at

a Walmart, because they did not have enough money for housing or a motel room and had nowhere else to stay. In mid-August, respondent and LC, along with their two dogs, slept for two nights in a borrowed Jeep parked in front of a library. Since LC's removal, respondent had remained unemployed and continued to reside in a homeless shelter, which was not a suitable environment for LC.

There were also underlying questions regarding respondent's mental stability. She was often evasive and uncooperative. She was unable to find work despite being well educated. Respondent had accused one of the case workers of trying to poison her dogs. In addition, she gave troubling testimony in which she suggested that the CIA was responsible for her eviction from her mother's senior living residence.

Respondent contends that the circuit court erred because it did not find that LC's environment was subjecting him to a substantial risk of harm, or that his physical or mental wellbeing was at risk. We disagree. The statutory text of MCL 712A.2(b)(1) is written in the disjunctive. The word "or" indicates that *only one* of the conditions described in MCL 712A.2(b)(1) need be proven by a preponderance of evidence. See *In re Systma*, 197 Mich App 453, 454-455; 495 NW2d 804 (1992); see also *People v Kowalski*, 489 Mich 488, 499 n 11; 803 NW2d 200 (2011) (noting that the disjunctive word "or" is used to indicate a separation between two different alternatives). Respondent's contention that LC did not fall within the scope of MCL 712A.2(b)(1) because he was a runaway is similarly without merit. Although respondent testified that she called the Taylor police to notify them that LC had run away, Couls testified that he called the Taylor police and there was no report on file. Moreover, at least at one point, respondent knew that LC was staying at a friend's house.

There was sufficient evidence presented at trial to establish that LC was "without proper custody or guardianship" from at least mid-August until September 4, 2012. See *Systma*, 197 Mich App at 454-455. Respondent remained unable to provide proper custody and care at the time of trial. Accordingly, we conclude that the circuit court properly assumed jurisdiction over the minor child pursuant to MCL 712A.2(b)(1).

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Kathleen Jansen